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RESEARCH ARTICLE

SOCIAL JUSTICE AND THE LAW (WITH SPECIAL REFERENCE TO NATIONAL AND INTERNATIONAL DOCUMENTS)

*Dr. Patel, C.L.

Professor of Law, Pt. RSS University, Raipur (C.G.), India

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ABSTRACT

In times of old cave society might was right. But with the growth of society rights of the citizens had been protected by might even by the arm of the police and by the rigour of iron bars. Thus, orderly might triumphing over disordered might for the preservation of right. A powerful instrument for the preservation of right is that of the jus civile. For preservation of social wrong and injustice there must be efficient administration of justice according to the predeclared principles of law and this can be done through the machinery of law courts and legal process. Were it not for the law courts, the strong could and would have prevailed over the weak and the unjust have triumphed over the just and the good. Therefore, to keep up the social equilibrium the administration of justice according to law had been developed through the State. In this way with the development of the State, private justice got substituted by social justice. The concept of social justice is best understood as forming one part of the broader concept of justice in general. Social justice came to be regarded as an attribute which the 'action' of society, or the 'treatment' of individual or groups by society, ought to possess. The expression has a definite meaning, describes a high ideal, and points to great defects of the existing social order which urgently called for correction. Social justice is the right of the weak, aged, destitute, poor, women, children and other under-privileged persons to the protection of the State against the ruthless competition of life, proper balancing of the competing claims and concerns the distribution of benefits and burdens throughout the society, as it results from the major social institutions. The principle of social justice is the concomitant of a just State, which strives to establish a just social order to subserve the common good of the people. Social justice demands the abolition of all sorts of inequalities which result from inequalities of wealth and opportunity, race, caste, religion and title and harmonize the rival claims and interests of different groups and sections. The concept of social justice, thus, takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities. Social justice is the strong claim of the people against the State for the equitable distribution of the resources and opportunities. There is an attempt under this article to examine, in brief, the area and scope of social welfare legislations upon which the principles of social justice has been injected. The purpose of this article is to discuss how social justice is rendered in the field of social welfare legislation to the under privileged people of India.

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INTRODUCTION

The concept of social justice is best understood as forming one part of the broader concept of justice in general. Social justice came to be regarded as an attribute which the 'actions' of society, or the 'treatment' of individuals or groups by society, ought to possess. The expression has a definite meaning, describe a high ideal, and points to great defects of the existing social order which urgently call for correction. Social justice is the right of the weak, aged, destitute, poor, women, children and other under privileged persons to the protection of the State against the ruthless completion of life proper balancing of the competing claims and concerns the distribution of benefits and burdens throughout the society, as it results from the major social institutions.

The principle of social justice is the concomitant of a just state, which strives to establish a just social order to subserve the common good of the people. Social justice demands abolition of the all sort of inequalities, race, caste, religion and title and harmonize the rival claims and interests of different groups and sections. The concept of social justice, thus, takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities. Social justice is the strong claim of the people against the State for the equitable distribution of the resources and opportunities. According to David Miller, "Social Justice" is social and economic claims-----directed towards providing minimum standard of decent living for each person.¹ The expression "Social Justice" is a very elastic and elusive term and can be stretched in support of different claims by divergent approaches. It is a hot favourite of politicians who make a very frequent use of it as champions of the masses to win their hearts in support of their programmes and policies

*Corresponding author: Dr. Patel, C.L.

Professor of Law, Pt. RSS University, Raipur (C.G.), India.

to fulfill their hopes and aspirations. A systematic study of the concept of social justice is, therefore very necessary to discover the true meaning extent and scope of this somewhat vague and undefined expression. Though social justice is a branch of justice it is much wider than the traditional concept of justice. From the very dawn of civilization justice dominated the minds of the people as the true end of law. Man is gifted with reason, and by nature social. He wants peace, security of person and property, freedom of speech and expression and above all happiness. Political thinkers and philosophers all over the world have therefore been striving to evolve a legal order in which the aforesaid aspirations to the people may be fulfilled. Such an order is conceived to be a just order and justice consists in promoting the welfare of the people. According to Salmond in order to consider whether an action is just or unjust we have to take into account its effects on the well-being of the mankind at large. It is right and just if it promotes public welfare; wrong and unjust if it diminishes it.² Justice lies mainly in the domain of morality. It being essentially social virtue, a question of justice arises mainly in the context of a person's conduct in relation to others. Originally the focus was on the individual and the questions that arose for consideration were whether his conduct in relation to others was just or unjust. The focus of social justice is on the society itself. Social Justice postulates a just society in accordance with the social consciousness of the people which is largely a product of political and economic developments.

Quest for Social Justice

The concept of social justice is native to India being incorporated in the old Hindu Philosophy of Vedas and Smritis. The quest for social justice began with the famous slogan of the French Revolution "Liberty, Equality and Fraternity" although the seed seeds of social justice may be found in the theory of distributive justice propounded by Aristotle. The theory demanded a fair distribution of the social benefits and burdens among the members of the community. This has been universally accepted by almost all philosophers. Recent developments in crystallizing the concept of social justice emanate from the guidelines laid down in the provisions of Philadelphia Charter, Treaty of Versailles, International Labour Organisation's Conventions and Declaration of Human Rights. The concept of social justice came to be distilled and identified as essential prerequisites for world peace in the treaty of Versailles signed by the high contracting parties on 28-06-1919. The concept came to be further crystallized in the Universal Declaration of Human Rights made in the United Nations Charter after World War II. These principles were translated into specific resolutions and recommendations by various International Conferences. India Being signatory member of I.L.O. has tried to instill those recommendations into its labour legislations to the extent permitted by the situations obtaining in this country.³ Constitution of India is the corner-stone of the legal edifice of the nation. Social justice is the signature tune of the Constitution of India. The idea of social justice has been defined and developed by the Supreme Court of India 'under the artistic hands of Justice Gajendragadkar, Justice V. Krishna Iyer, Justice Bhagwati and others.

Forms of Social Justice

Social justice, like its other forms, operates at two different levels namely:-

- Distributive justice, and
- Corrective justice

Distributive Justice

The notion of distributive justice deriving from Nicomachean Ethics aims at the distribution of goods among individuals on the basis of their relative claims. According to Aristotle, distributive justice "is manifested in distributions of honour or money or the other things that fall to be divided among those who have a share in the constitution" and is based on the principle that "there has been equal distribution among equals. According to him "injustice arises when equals are treated unequally and also when unequals are treated equally." But he justifies the violation of equality rule when he said that "distribution must be according to merit". Nicholas Rescher opines that "distributive justice embraces the whole economic dimension of social justice, i.e., the entire question of proper distribution of goods and services within the society. Rawls formulated the principle of distributive justice on the basis of equality but qualified it with the "difference principle", when he says that" all social primary goods-liberty and opportunity, income and wealth, and the bases of self-respect-are to be distributed equally unless an unequal distribution of any or all these goods is to the advantage to the least favored.⁴ The notion of distribution justice is concerned with the distribution of the economic resources and has an innate relation with the concept of social justice.

Corrective Justice

Orrective or remedial justice, for Aristotle, is essentially the measure of the technical principles which govern the administration of law. In regulating legal relations a general standard of redressing the consequences of action must be found, without regard to the person. For him justice is transactions between man and man is a short of equality and injustice a sort of inequality. Corrective justice seeks to restore equality when this has been disturbed by wrongdoing, which assumes that the situation that has been upset was distributively just.⁵ Here comes the role of courts to restore equality. "The function of the courts is that of applying justice in its corrective sense according to specific rules relating to the application of corrective justice. In a fair legal system procedural rules afford each party an equal opportunity of presenting his case. Corrective justice is to rectify the unequal treatment of the past resulting to unequal pedestals of life, which was calculated and deliberate. The aftermath of the consequential socio-economic disparities has resulted into the "legal incompetence" of the "legally handicapped" population. Therefore, to ensure the dispensation of justice in all its manifestation to this "justice constituency" preferential opportunities to realize the resources and state leverage in the rubrics of legal aid becomes indispensable the nation of corrective justice inheres an obligation of the state to correct the injustices through the affirmative action by extending due leverage to the deprived to get justice

Principles (Component) of Social Justice

Liberty, Equality and Fraternity are the three basic principles of social justice. Each of them has interpreted by the social and political reformers, from time to time, with the principal object of promoting the interest of have-nots, the oppressed,

suppressed and downtrodden sections of the society to build up a social order free from oppression and exploitation in society. It would be proper to discuss each of these principles separately.

Liberty

According to L.T. Hobhouse "Common good" is the rational or ideal object in pursuance of which liberty is granted. Early liberal thinkers upheld "Laissez-faire" as an essential attribute of liberty. This meant non-interference by the State in economic activities to enable the market-forces to operate freely. Thus the early liberalism stood for negative liberty interpreted as "absence of restraint" that is absence of undue and arbitrary interference with individual action on the part of the Government. Since this concept of liberty led to exploitation of working class and other vulnerable sections of the society, the positive concept of liberty was projected which assigned a positive role to the State in securing favourable conditions for the under-privileged sections e.g. protection of the workers and other weaker sections and making provision for their welfare including provision for schools, hospitals, transport, housing etc.⁶ Liberty as a positive concept comprises liberties or rights which are essential to the development of the individual and the perfection of national life for example liberty of thought and expression. The negative and positive concepts of liberty exist side by side in the present day society with varying emphasis on each, under different systems.

Equality

Equality is a very vital principle of social justice. While it is a boon to the poor, the oppressed and the downtrodden, it is dreaded by the rich and prosperous section of the society, because it can be stretched beyond the limits of justice. As Hobhouse has observed "Justice is a name to which every knee will bow. Equality is a word which may fear and detest." The problem of equality has baffled political thinkers and social reformers from the earliest time. Aristotle defined equality as treating equals equally and unequals unequally. The modern idea of equality on the contrary focuses attention on the substantive aspect and seeks correction of inequalities in so far as they are unjust and alterable according to prevailing social consciousness. The French declaration of rights of man and citizen read "Men are born and remain free and equal in rights. Social distinctions can be based only on public utility." Law is the expression of the general will. It must be the same for all whether it protects or punishes. All citizens, being equal in the eyes, are equally eligible to all public dignities, places and employments according to their capacities and without any other distinction than that of their virtues and talents. Mere formal equality is not enough for oppressed and exploited sections of the society which not only need protection but help from the State to be able to achieve equality not only in form but in substance. This requires removal of unjust and oppressive conditions which are capable of alteration. The principle of equality demands that we may concede to only such discrimination as is based on rational grounds. What is rational depends on the level of prevailing social consciousness.

Fraternity

The ideal of fraternity is no less important than liberty and equality. It owes its origin to brotherhood of man which is

preached by Christianity as well as many other religions. According to Ernest Barker the principle of fraternity consists in distributing among members of the State the various rights which are conditions of personal development. He said:

"All of us need liberty and equality for ourselves. All of us need collectively a common equipment for our common benefit such as communication transport, sanitation, housing, medical service, development of forest, mines, electric power etc. which go beyond the reach of private enterprise and are meant for common benefit."

The idea of fraternity involves an emotion rather than a principle of government. Barker prefers to call it "co-operation or solidarity". In other words it is a kind of cohesion in the society which brings about emotional integration of the people within a State as a Nation. In a nutshell Barker has defined fraternity with all that which legitimizes a modern welfare State. The principle of fraternity should not only transcend the limits of liberty and even of equality to provide a humanistic base for a social organization. Social justice is primarily concerned with the claims of under privileged sections of society—those who have been deprived of their rights, freedom and opportunities of development because of a defective social system. Fraternity of course denotes a sentiment but in association with liberty and equality signifies the conditions which inspire a feeling of universal fellowship and which mark an end of all conflict. According to J.S. Mill human civilization advances through widest possible diversities of mind and taste; and to encourage this diversity or variety men must be encouraged to develop their differential talents and aptitudes by setting high standards of excellence and providing for opportunities of distinction. What is needed is to allow a healthy completion which inspires love of excellence not grudge; only a sense of security with opportunities of distinction can inspire the spirit of co-operation among human beings.⁷ Talent and effort must be rewarded specially to save society from impoverishment. If social justice is not defined as a policy of impoverishing the whole community but as a instrument of development of human culture and a citadel of human freedom and human values we must create conditions where excellence is allowed to flourish in the interests of the society as a whole.

Social Justice and the Constitution of India

We all know that Bharat Ratna Dr. B.R. Ambedkar was the Chief architect of the Constitution. He was not only an eminent jurist but a distinguished man of letter and vision. He was fully aware of the pattern and problems of Indian society, the aspirations of the different sections of the society, their conflicting interests and the demands of justice. The Constitution is an exquisite piece of social engineering at his hands. The keystone of the Constitution is justice in its widest concept, including Justice Social, Economic and Political. Social justice has not been defined in the Constitution, but the scheme of social justice as laid down in the Constitution can be gathered from the preamble and the various provisions in the Constitution. Material parts of the preamble are as under:- We the people of India having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, Social, Economic and Political; Liberty of thought, expression, belief, faith and warship; Equality of status and opportunity; and to promote

among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation. From the preamble it is clear that it gives due importance to Liberty, Equality as well as Fraternity which are the three principles of social justice which has been explicitly assured therein. The Constitution of India in the preamble resolved to secure to all its citizens: Justice, social, economic and political. Therefore, the concept of social justice is not foreign to legal order. Social justice is the primary objective of the State as envisaged in our Constitution. The Supreme Court in *Sadhuram Vs. Pullin Behari*,⁸ observed that social justice is one of the aspirations of the Indian Constitution. In view of securing to all its citizens social justice in our Constitution provides some fundamental rights in Part-III some of which are available to all persons and some are enjoyable only by the citizens of India. They are:--

- Equality before law(Art. 14)
- Prohibition of discrimination on ground of religion, race, caste, sex or place of birth(Art. 15)
- Equality of opportunity in matters of public employment(Art. 16)
- Abolition of untouchability(Art. 17)
- Abolition of titles(Art. 18)
- Protection of certain rights regarding freedom of speech etc.(Art.19)
- Protection in respect of conviction for offences(Art. 20)
- Protection of life and personal liberty(Art. 21)
- Protection against arrest and detention in certain cases(Art. 22)
- Protection of traffic in human beings and forced labour(Art. 23)
- Prohibition of employment of children in factories or mines or in any other hazardous employment(Art. 24)
- Freedom of Religion(Art. 25-28)
- Protection of interests of minorities(Art. 29-30)
- Judicial Remedies for enforcement of rights conferred by this Part-III of the Constitution (Art. 32)

To realize the goal of social justice our Constitution also provides some directives to the State in the form of Directive Principles of State Policy (Articles 39-50) and lays down that the State shall direct its policy towards securing these objectives. The most important these directives are:--

- Promotion of welfare of the people(Art. 38)
- Adequate means of livelihood; equal distribution of the material resources of the community; distribution of means of production to the common good; equal pay for equal work; promotion of health and strength of workers, men and women and the children ; protection against exploitation of childhood and youth(Art. 39)
- Equal justice and free legal aid(Art. 39-A)
- Right to work, education and to public assistance in certain cases(Art. 41)
- Just and humane conditions of work and maternity relief(Art. 42)
- Participation of workers in management of industries(Art. 43-A)
- Uniform civil code for the citizens(Art. 44)
- Provisions of early childhood care and education to children below the age of six years(Art. 45)

- Promotion of educational and economic interests of Scheduled Caste, Scheduled Tribes and other weaker sections(Art. 46)
- Duty of the State to raise the level of nutrition and the standard of living and to improve public health(Art. 47)
- In interpreting the philosophy of social justice of our Constitution Justice Fazal Ali observed:

The concept of social justice is not foreign to legal justice or social well-being or benefit to the community rooted in the concept of justice in the 20th century. The challenge of social justice as I see it is primarily a challenge to the society at large more than to the Court immediately. Social justice is one of the aspirations of our Constitution. But we, the Courts must remember are pledged to administer justice—social or legal, jurisprudence has shifted away from fine spun technicalities and abstract rules to recognition of human beings as human beings.⁹

Social Justice in the Field of Labour and Industrial Laws

The concept of social justice as a norm is all pervasive, had defied definition and has been better understood by examining the converse concept of justice. Within the sphere of labour management relationship, it may mean removal of inequalities in service and living conditions by granting a minimum wage., a comfortable work schedule and human working conditions. It may also mean providing opportunities of employment to those who are deserving and yet unemployed. It may even mean those acts which promote rational distribution of wealth or an even growth of various sectors of community. Whatever may be the controversy or conviction, the same has to be just and fair not only to the individuals involved, but just and fair to the society in general. This concept in the context of Part-IV of the Constitution dealing the Directive Principles of the State Policy also presumes that the State is a necessary party and perhaps better involved in everything that goes on in an industry. The State as the custodian of the interests of the society has to play an effective role not only in guaranteeing fair wage, a comfortable working condition, but also in the production of wealth and distribution thereof.¹⁰ The concept of Social justice, in the field of industrial law, signifies that everyone who has contributed to the production of goods or services should get his due share in the property of the concern where he is employed. The concept further contemplates a disciplined and orderly work force, able and willing to contribute to the production of wealth for the society. In such a social order, justice may even require that 'dead wood' be 'chopped off' making room for the young and lively. It may further imply that progress in the society may be even and imbalances should not be allowed to grow. The approach is thus all embracing and covers the widest possible field. While it takes into consideration all realities of life, it does not wish to give up idealism inherent in the thought. With the above background it will be clear that broadly speaking, for the purpose of industrial adjudication, doing social justice is the creation of such equitable, social and economic conditions between two partners of production as may ensure social security and decent living with leisure to one as a human being free from fatigue and exploitation, and to other a healthy and vibrant economy, with the object of establishing harmony between the two in the interest of peace and progress of the industry as a national unit of production working in the larger interest of the people of the nation as a whole. It is this justice

which is neither absolute nor fluid nor erratic depending on the caprice of an individual. It is not something which has no shape, content or value. It is justice because it strike a balance between conflicting power blocks and conflicting interests between the two main components of the industrial world.¹¹ To summarize social justice requires the industry to ensure job security, humane conditions of work, payment of living wage which may sustain a workman as a human being, with a standard of life, dignity and leisure leaving scope for social and cultural development of the workman and his family members. It permits, healthy trade union 'activities' for mutual benefit and industrial peace so that production is augmented for the benefit of the nation as a whole. It by implication, casts duty on a workman to behave as a disciplined organ of the industry and sincerely work for the maximum production in the interest of the nation in a spirit of cooperation with the employer for doing the common good. His own welfare is inherent in the progress and smooth running of the industry. Neither side should forget that neither the workman alone, nor the industry alone nor the Government in isolation can thrive. All the three should put their best for the nation as a whole for the society of millions of the citizens, for whose benefit of welfare the labourers work, the industry runs and the Government exist. The aim of the social justice is to do the justice to that society at large.¹²

Objectives and Categories of Labour and Industrial Legislations

Protection of weaker sections of society has been the aim of all social welfare measures. Labour legislation in our country has always been guided by this basic principles. In Addition to this, labour legislation aims at discipline on the part of the workers and employers and regulating their relationship on fair and equitable basis. It also acts as a tool for social justice and social welfare. In brief, labour legislation in any country should be based on the principles of social justice, social equity, international uniformity and national economy.

At present there are more than 120 labour laws on the Statute book of the Central and State Government. Labour and Industrial Legislations can be grouped under the following heads, viz:--

- Laws dealing with the working conditions in factories
- Laws dealing with industrial relations
- Laws dealing with wages and bonus
- Laws dealing with welfare
- Laws dealing with workers of weaker societies
- Laws dealing to social security measures
- Laws dealing with other miscellaneous labour matters

Some Obstructions or Hindrances to Social Justice

Following are the some impediments in the way of social justice in India:--

- **Growing Population of this Country:** If the population growth of this country goes on increasing at the present rate the struggle for existence would become keener and keener. If the population growth is not checked social justice will ever remain an unfulfilled dream.
- **Corruption:** Corruption in Government Departments and elsewhere is one of the biggest impediments to

social justice. Corruption like white-ants is eating away the moral fibre of the nation and the various scheme launched for eradicating poverty and improving the condition of the poor fail because the benefit of these schemes does not in adequate measure reach those for whom it is meant. The late Prime Minister Shri Rajiv Gandhi once said that if Rs. 100/- are sanctioned for the needy only Rs. 15/- reach them. It is, therefore, very necessary to put down corruption with a firm hand.

- **Exploitation:** It is no doubt true that in order to make social justice meaningful exploitation at all levels and of all kinds must be ended. The politicians usually harp on caste based exploitation. No doubt it existed in our country in a very virulent form for centuries but now it is a thing of past. Poverty is the root cause of social and educational backwardness of our country. Eradication of poverty and illiteracy are therefore imperative if we want the uplift of socially and educationally backward people of this country. Education and enlightenment alone can put an end to such exploitation with the aid of Government and social organization.
- **poverty:** There can be no doubt that a large percentage of the people of this country is living the below of poverty line in spite of various scheme launched by the Government from time to time to eradicate poverty.

The poor and the weaker sections of Indian societies are exploited by those industrialists and capitalists who have amassed illegal wealth under the protection of or with the connivance of politicians in power. There is a need that poverty should be removed and the ditch of poorness and richness should be eradicated for providing social justice to the people of India.¹³

Conclusion

Social justice seeks to fulfill three distinct urges of the people viz. liberty, equality and fraternity. It must always be remembered that it is a branch of justice. The great quality of justice is that it commands instinctive respect and is well tolerated even by those against whom it operates. Social justice is primarily concerned with the claims of the under privileged sections of the society who have been deprived of their rights, freedom and opportunities of development because of a defective social system. But the claims of the other groups and sections in the society are not to be ignored. As pointed out by their Lordship of the Supreme Court in *Crown Alluminium Works vs. Workmen* Social justice in the Harmonization of the social claims and the interest of different groups and section in the social structure by means of which alone it is possible to build up a welfare State. India which is composite of people of so many races, religions, languages, castes, and cultures can attain unity only if there is a spirit of brotherhood amongst all sections of the people a feeling that they are children of the same soil, the same motherland. A fair and evenhanded executive administration can do more to promote fraternity than any constitutional or legal provision.

The Indian Constitution, it has been aptly said, is first and foremost a social document and a majority of its provisions are either directly aimed at furthering the goals of social revolution or attempt to faster the revolution by establishing the conditions necessary for its achievement and the core of commitment to social revolution is in Part-III and IV, in the fundamental rights and in the directive principles of State policy which are the conscience of the Constitution. But just

as the fundamental rights conferred by Part-III would be without a radar and a compass if they are not geared to an ideal, in the same manner the attainment of the ideals set out in Part-IV would become a pretence and tyranny if the price to be paid for achieving that ideal is human freedoms. One of the faiths of the founding fathers was purity of means. The goals set out in Part-IV have, therefore, to be achieved without the abrogation of means provided for by Part-III. It is in this sense that Part-III and Part-IV together constitute the core of the Constitution and combine to form its conscience. Industrial jurisprudence in our country is based on the principles of social justice to ensure a fair deal to the industrial workers. In short the provisions of the Constitution must be read as a whole to find out the true meaning and the spirit of the Constitution which was enacted to ensure Justice Social, Economic and Political to each and every citizen of India. It should be, further, borne in mind that the founding fathers attached great importance to the dignity of the individual and were keen to promote fraternity so as to ensure unity integrity of the Nation. Anything done to drive a wedge between two sections of the society, either on the basis of caste, creed or religion or economic classification such as rich and poor, would put undue strain on fraternity and endanger unity of the Nation. For building up a welfare State, the welfare of each and every section of the society must be kept in view.

Parties may differ how common good can be better achieved under the Constitution, but their object must be common good and not the good of any particular class or section of society even though it constitute a majority.

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